

HV

5076

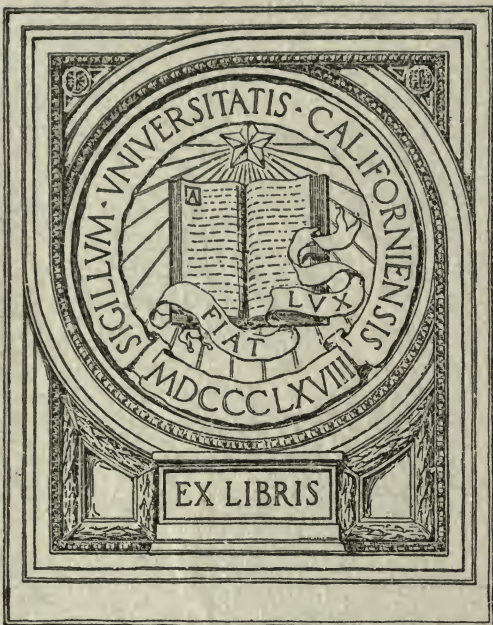
.L48

UC-NRLF



\$B 268 684

YB 07522



Bench vs. Bar



OR

Judicial Answers
to Saloon Arguments

By

LEMUEL D. LILLY
Attorney, Columbus, Ohio



A Book of Facts

Anti-Saloon League Year Book

This volume is a real encyclopaedia of Facts and Figures relating to the **Liquor Problem.**

IT IS A WORK OF REFERENCE

For the minister, teacher, student, campaigner and others interested in the temperance reform.

256 PAGES OF VALUABLE DATA

Containing seventy "wet" and "dry" maps; a chronology of the anti-liquor movement in America from 1642 to 1910; reports of conditions in every state; facts and figures from the reports of the United States Commissioner of Internal Revenue; general Political, Economic and Historical Aspects of the Problem.

PRICE POSTPAID

Paper Bound, 35 Cents

Cloth Bound, 60 Cents

Send orders to any state headquarters of the Anti-Saloon League, or to

**THE AMERICAN ISSUE PUBLISHING CO.,
WESTERVILLE, OHIO.**

Bench vs. Bar

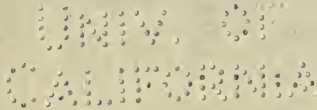
OR

Judicial Answers to Saloon Arguments

By

LEMUEL D. LILLY

Attorney, Columbus, Ohio



Westerville, Ohio

The American Issue Publishing Company

1910

HV5076
.L48

THE
BIBLIOTHECA

THE PURPOSES OF GOVERNMENT.

The purposes of government are nowhere more clearly set out than in the preamble to the National Constitution. These purposes are: to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity.

The union has been perfected, justice has been established, domestic tranquility is insured, the common defense is provided for, and we are engaged today in the task of promoting the general welfare and securing the blessings of liberty to ourselves and our posterity.

The promotion of the general welfare is something that cannot be accomplished in a day or any fixed time; it is a work that is continuing in its nature. It involves the development of public character, and public character can only be advanced by slow degrees and persistent work. The public welfare can be promoted in no better way than by the protection and advancement of public morals.

Gladstone's maxim was that it is the duty of government to make it as easy as possible to do right and as hard as possible to do wrong.

In all the essentials of patriotism, Washington still remains our first American. In his farewell address he said: "Morality is a necessary spring of popular government, * * * * "Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness."

In a republic where the people govern themselves, intelligence and morality are the two corner stones of the temple of liberty—intelligence enough to comprehend the issues of state when they are presented, and moral character enough to do the right thing when the public welfare calls for our services.

The immoral man does not help manage the government; the government must help manage him. Anything which lessens the disposition or ability of a man to govern himself, lessens his disposition and ability to help govern others. Every

citizen, who for any cause, cannot, or will not, govern himself, is a crumbling stone in the temple of liberty. The immoral man is, therefore, an element of weakness in a republic, and any business or institution which produces the immoral man is an enemy of the state.

The constitution of Ohio recognizes these moral truths as fundamental by the following provisions, viz: "Religion, morality and knowledge, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction," Art. 1, Sec. 7.

LEGISLATURE HAS FULLEST AUTHORITY TO PROMOTE GENERAL WELFARE.

These moral principles are not mere fancies for patriotic holidays. They are the most necessary elements of every day conduct. Both the federal and the state courts have given their fullest sanction to all laws which promote the general welfare.

The general welfare consists of many different things. Without attempting to enumerate all the elements of the public welfare, it will be sufficient for this discussion to say, that the general welfare includes the public safety, public health, public comfort, public morals, public convenience and general prosperity. These objects are attained in the administration of the government by the application of the police powers of the states.

The police power is the power of promoting the general welfare by restraining and regulating the use of liberty and property. An act of government comes within the police power of the state, if it aims to secure and promote the general welfare, even though it acts by restraint and compulsion.

The public welfare is promoted by improving the social and economic conditions affecting the community at large, with the view of securing the greatest good to the greatest number. Some people think they have expressed the whole truth when they proclaim that government rests upon the consent of the governed. This declaration is a great truth but in these days of a great political awakening men are giving appropriate emphasis to another truth equally vital, that government rests upon the necessity of putting even inherent rights under such control as is essential to their preservation. To this end every individual, every sovereign citizen, must submit to such re-

straints in the exercise of his liberty or the use of his property as may be required to remove or reduce the danger of the abuse of those rights by those who are careless or unscrupulous.

The police power may be exercised for the protection of society from crime, for the preservation of safety and health and for the promotion of public morals. Government has a right to promote public morals because immorality has no right to existence or toleration, and because vice impairs the strength of the community and spreads evil example and tends to corrupt others.

The foregoing statement of the police power is supported by a multitude of judicial opinions. A few citations are appropriate.

In the case of *Booth v. People*, 186 Ill. 43, 78 Am. St. Rep. 229, 231, the Supreme Court of Illinois says: "The state inherently possesses, and the general assembly may lawfully exercise, such power of restraint upon private rights as may be found to be necessary and appropriate to promote the health, comfort, safety and welfare of society. This power is known as the police power of the state. In the exercise of this power, the general assembly may, by valid enactments—i.e., "due process of law"—prohibit all things hurtful to the comfort, safety and welfare of society, even though the prohibition invade the right of liberty or property of an individual."

The New York Court of Appeals, in the matter of *Jacobs*, 98 N. Y. 98, 50 Am. Rep. 641, says of the police power: "That power is very broad and comprehensive, and is exercised to promote the health, comfort, safety and welfare of society. Its exercise in extreme cases is frequently justified by the maxim *salus populi suprema lex est*. Under it the conduct of an individual and the use of property may be regulated so as to interfere, to some extent, with the freedom of the one and the enjoyment of the other; and in cases of great emergency engendering overruling necessity, property may be taken or destroyed without compensation, and without what is commonly called due process of law."

In *Commonwealth v. Alger*, 7 Cush. 53, 84, Shaw, Chief Justice of Massachusetts, says that the "police power was vested in the legislature by the constitution, to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the

good and welfare of the Commonwealth and of the subjects of the same."

In the case of *Board of Pharmacy v. Cassidy*, 74 S. W. Rep. 732, the Kentucky Court of Appeals says: "All courts agree that the police power of the state extends to all regulations affecting the lives, limbs, health, comfort, good order, morals, peace and safety of society, and hence may be exercised on many subjects and in numerous ways."

These principles, in various forms of expression, but always with the same general meaning, have been recognized by the Courts of every state in the Union. There are no exceptions. The principle could not be more clearly stated by multiplying quotations from the opinions of the Courts.

However, some clearer understanding of the general principles may be had by reference to a few concrete illustrations of the exercise of the power in various cases. The police power has been exercised to prevent fraud, *People v. Wagner*, (Mich.) 24 Am. St. Rep. 141; to protect public health, (Ga.) *Morris v. Columbus*, 66 Am. St. Rep. 243; to prohibit persons coming from a place infected with contagious disease (72 Am. St. Rep. 458); to compel compulsory vaccination, *State v. Hay*, (N. C.) 78 Am. St. Rep. 691; to restrain the manufacture and sale of oleomargarine, *Butler v. Chambers*, (Minn.) 1 Am. St. Rep. 638; to regulate the sale of lard substances and of food prepared therefrom, *State v. Aslesen*, (Minn.) 36 Am. St. Rep. 620; to prescribe sanitary regulations for dairymen and other milk dealers, *State v. Broadbelt*, (Md.) 73 Am. St. Rep. 201; to require a railroad company to give signals at highway crossings, *Ry. Co. v. Slater*, (Ill.) 16 Am. St. Rep. 242; to prohibit any person from using any building for a stable for more than four horses, unless licensed to do so, *Newton v. Joyce*, (Mass.) 55 Am. St. Rep. 385; to regulate the keeping of dogs, *Griggs v. Macon*, (Ga.) 68 Am. St. Rep. 134; to require that water be furnished in sufficient quantities in tenement houses, *Health Department v. Rector*, (N. Y.) 45 Am. St. Rep. 579; to punish habitual drunkenness, *St. Joseph v. Harris*, 59 Mo. App. 122; to regulate the sale of intoxicating liquors, *Miller v. State*, 3 O. S. 486; to prohibit base ball on Sunday, *State v. Powell*, 58 O. S. 324.

These decisions from the State Courts have the fullest sanction of the Supreme Court of the United States. That court has said time after time that the several states have a right to protect the public health and the public morals.

The court has said: Power to protect the general welfare is not limited. (*N. O. Gaas Light Co. v. La. Light Co.*, 6 Sup.

Ct. Rep. 262,) * * * * The police power "extends to all matters affecting the public health or the public morals." (Stone v. Mississippi, 101 U. S. 814.) In sustaining the Kansas Prohibition statute in 1887, the Court said: "Everything prejudicial to the health or morals of a city may be removed," (Mugler v. Kansas, 123 U. S. 623.) "Whatever is contrary to public policy or inimical to the public interests is subject to the police power of the state." (L. & N. Ry. Co., v. Kentucky, 161 U. S. 677.) The police power "May be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances." (Holden v. Hardy, 169 U. S. 366.)

Perhaps the strongest statement of the doctrine to be found any where is in the case of *Lawton v. Steele*, 152 U. S. 133, where the United States Supreme Court thus proclaims it: "The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every state in the union. It is universally conceded to include everything essential to the public safety, health and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance. Under this power it has been held that the state may order the destruction of a house falling to decay or otherwise endangering the lives of passersby; the demolition of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restriction of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane or those afflicted with contagious diseases; the restraint of vagrants, beggars and habitual drunkards; the suppression of obscene publications and houses of ill fame; and the prohibition of gambling houses and places where intoxicating liquors are sold."

POWER TO PROTECT PUBLIC MORALS IS INHERENT.

The right of the state to protect itself against crime and misery is a law of nature, enjoyed by society before constitutions were ever adopted, and is as fundamental as the right of self-defense in the individual.

In *Tredway v. Riley*, 32 Nebr. 495, the Supreme Court of Nebraska quotes as good law the language of Mr. Justice Mc

Lean in the License cases, 5 How. 589, where he says the police power "is a power essential to self-preservation, and exists, necessarily, in every organized community. It is, indeed, the law of nature, and is possessed by man in his individual capacity."

In *State v. Aiken*, 26 L. R. A. 352, the South Carolina Supreme Court says of the police power: "The origin of this power must be sought in the very purpose and frame work of organized society. It is fundamental and essential to government. It is a necessary and inherent attribute of sovereignty. It antedates all laws, and may be described as the assumption on which constitutions rest; for the state, whether we regard it as an association of individuals or as a moral organism, must have the right of self-protection, and the power to preserve its own existence in safety and prosperity, else it could neither fulfill the law of its being nor discharge its duties to the individual. And to this end it is necessarily invested with power to enact such measures as are adapted to secure its own authority and peace, and preserve its constituent members safety, health and morality."

The Supreme Court of Tennessee thus expresses the same proposition:

"The first right of a state, as of a man, is self-protection, and with the state that right involves the universally acknowledged power and duty to enact and enforce all such laws, not in plain conflict with some provision of the State or federal constitution, as may rightly be deemed necessary or expedient for the safety, health, morals, comfort and welfare of its people." (*Harbison v. Knoxville Iron Co.*, 103 Tenn. 421, 76 Am. St. Rep. 682.)

The United States Supreme Court is in full accord with these state decisions. That Court has said:

"No legislature can bargain away the public health or public morals. The people themselves cannot do it, much less their servants. (*Stone v. Mississippi*, 101 U. S. 814.) "No corporation or individual can acquire any rights, by contract or otherwise, which the government may not annul and take away, if the exercise of such rights becomes detrimental to the public health or the public morals." (*Gas Light Co. v. La. Light Co.*, 6 Sup. Ct. Rep. 262.) "This power legitimately exercised, can neither be limited by contract, nor bartered away by legislation." (*Holden v. Hardy*, 169 U. S. 366.)

SOME OBSERVATIONS.

1. The constitution of Ohio says that morality and knowledge are essential to good government—not merely appropriate, or helpful, but *essential*.

2. The right to protect public morals is inherent, is not limited, and cannot be lost or taken away. Vested rights in property and personal liberty of conduct may be restrained as far as the public welfare may require. No rights are of more importance than the public welfare.

3. The people need not beg for the right to pass moral legislation and secure the enforcement of laws for the protection of public morals. They have always had that right and have it now—the sacred right of self defense. No moral wrong in politics can acquire any legal rights. Whatever attributes of political power the wrong may manifest are usurpations. Vice has no rights and should not be tolerated.

4. Public health and public morals are always linked together in these doctrines of the courts. The more important part of the general welfare is public morals. We can ill afford to do without intelligence, but an unlettered man may be honest and therefore a safe citizen. A sick man may require much care and be a burden to his friends and even to the public. He may, nevertheless, be a harmless citizen. But the immoral man is never a harmless or safe citizen. Therefore the paramount duty of citizenship in a republic is to prevent the making of the immoral man.

5. While this controversy is in part social and economic, it is in still a wider sense patriotic. Government was not instituted among men, and is not carried on, merely for the purposes of building roads and streets, punishing crime and levying and collecting taxes, but for the higher purpose of promoting the general welfare—spreading intelligence, protecting public health and strengthening the moral character of our citizenship. This is the new patriotism. Anything which destroys or injures public morals is a traitor to the state.

PLACE OF THE SALOON IN SOCIETY AND GOVERNMENT.

Since intellectual and moral development are two essential purposes of government, let us see where the saloon ranks among social and political institutions. Let us compare it with other influences and forces, to determine its effect upon the public welfare. Let us apply the ordinary tests.

1. Intelligence.

Intelligence is one of the essentials of citizenship. What man ever gave even one year of his life to the best saloon in the State, and came out at the end of the year with as high intellectual ambitions as he had when he began? Does the saloon run a night school to educate the heads of its patrons? Does the young man who comes home late at night from that institution, come home with a deeper love of learning in his breast and a determination to drink deep at the fountain of knowledge, and make himself a scholar among men? You never yet saw a saloon that produced such an effect upon the human mind, and you have no sane reason to believe that you ever will. Whatever intelligence the citizen may possess, he has acquired in spite of the saloon, and not because of it. Therefore, the saloon wholly fails to fulfill the intellectual requirements of citizenship.

2. Morality.

Morality is another essential of citizenship. Let me ask you, what man ever gave one year of his life to the best saloon in the state, and came out at the end of the year with as high moral aspirations as he had when he began? Does the saloon run a Bible Class to elevate the morals of its patrons; does the father who comes home from the saloon late at night, come home with a warmer love in his breast for his family, and a broader charity that would bring the whole world to the Master? You never yet saw a saloon which produced such an effect upon the human soul and you have no sane reason to believe that you ever will.

These men, uncontrolled by principle, unhampered by conviction and impelled by their greed for gold, go blindly on destroying the moral character of our people, apparently without thinking that unless they are in some way prevented from controlling public affairs, their own lives, liberty and property would soon be destroyed by the very men whom their business has produced. The morality which they are every day destroying is the great force which every day saves them from destruction. The prevailing tendency of the saloon, and its attendant habits and associations is to make the citizen less fitted to govern himself. Therefore the saloon utterly fails to meet the moral requirements of citizenship.

3. Judicial Opinion of the Saloon.

The foregoing arguments may be called common place. We have heard such arguments all our lives. They are such argu-

ments as ministers and women advance. Some citizen who puts business above patriotism and revenue above morals, may demand more practical and less effeminate reasons. Without disparaging these arguments against the saloon and without conceding that any stronger and better reasons are needed, let us seek another line of authority, not open to the criticism that it is feminine or ministerial.

The Appellate Courts of the various states, and the Supreme Court of the United States are not religious bodies, nor temperance organizations, nor reform or agitation societies. They are judicial tribunals engaged in the high vocation of settling questions which other people have agitated. There is not a preacher, nor a woman, nor a paid advocate nor a professional reformer on any of these judicial tribunals. These judges are all lawyers. Lawyers as a class are not fanatics on moral questions. Judges are only lawyers elevated to the bench. The general characteristic of judges is that they are conservative, rather than radical, because they are constantly required to look backward for precedents for every forward step. Their decisions are not based on dreams or prophecies of the future, but on the tested wisdom of the past.

These courts and judges are not partisan advocates of any cause, but pronounce their judgments under a solemn oath to be impartial. As a class, they are men of good intelligence, comparing favorably with the intelligence of those engaged in the liquor business, and their judicial declarations are entitled to much respect. If we can justify this warfare against the saloon on the doctrines of these courts, we are on safe and sane grounds.

(a.) Opinions of State Courts.

Let us, therefore, examine some of these judicial declarations.

Nebraska.

"Laws regulating and prohibiting the manufacture and sale of intoxicating liquors are regarded as police regulations, passed for the prevention of idleness, drunkenness, pauperism and crime."—Tredway v. Riley, 32 Neb. 495.

Maryland.

"The habit of drunkenness and the evils attendant upon it, have always received a considerable degree of attention from the law making power. And when we consider the poverty, misery, ruin and wretchedness which intoxication entails upon its

unhappy victims, and the unspeakable woes which must be endured by helpless and innocent beings dependent upon them, and also the frequent crimes and disorders produced by the same cause. we may measure in some degree the necessity for a legislative remedy, if one can be found. Every consideration connected with the public welfare imperatively demands it."—*Trageser v. Gray*, 73 Md. 250.

Kansas.

"Intoxicating liquor is the prolific cause of disease, misery, pauperism, vice and crime. Its power to weaken, corrupt, debauch and slay human character and human life is not destroyed or impaired because it may be susceptible of some innocent uses, or may be used with propriety on some occasions. The health, morals, peace and safety of the community at large are still threatened."—*Durien v. State*, 80 Pac. Rep. 987. *State v. Durien*.

South Carolina.

"Liquor, in its nature, is dangerous to the morals, good order, health and safety of the people, and is not to be placed upon the same footing with the ordinary commodities of life, such as corn, wheat, cotton, tobacco, potatoes, etc."—*State v. Aiken*, 26 L. R. A. 345.

Illinois.

"We presume no one would have the hardihood to contend that the retail sale of intoxicating drinks does not tend, in a large degree, to demoralize the community, to foster vice, produce crime and beggary, want and misery."—*Schwuchow v. Chicago*, 68 Ill. 444.

Indiana.

"The evils which attend and inhere in the business of handling and selling intoxicating liquors are universally recognized, and the danger therefrom to the peace and good order of the community everywhere necessitates the exercise of the police power."—*Schmidt v. City*, 80 N. E. 632.

Iowa.

"An enumeration of all the evils arising from the use of intoxicating liquors need not be attempted. They are numerous and affect the people collectively and individually. Idleness, poverty, pauperism, crime, insanity, disease, and the destruction of human life, follow indulgence in the habit of using intoxicating drinks. Millions of our fellow-countrymen are

addicted to this habit, and of these, millions become drunkards. Homes are broken up and domestic peace is destroyed by drunkenness. The prisons, almshouses, and institutions for the care of orphans, insanity and affliction, are largely filled by the vice. * * * * Thinking men of this day largely concur in the opinion that the influence of the saloon, and the idleness and vice of the multitude of its clientage, constitute the great peril of American institutions. We think none will deny that nothing but evil flows from this source.”—Pearson v. International Distillery, 72 Ia. 348. See Also Santo v. State, 2 Iowa 165, 63 Am. Dec. 491.

Ohio.

In Adler v. Whitbeck, 44 O. S. 568, the court says that the traffic is “the acknowledged source of much of the crime and pauperism of the state.”

Michigan.

“The public evils of the intemperate use of ardent spirits, which are the results of an unrestricted use of them, are denied by none. The evil extends to all classes of society, and adheres to our race with a pertinacity and fatality that would satisfy the mind of the most skeptical that the *evil* at least, if not the remedy proposed, was *constitutional*. It has long been the subject of deep and anxious study, both with the philanthropist and the statesman, by what means, if any, the evil could be abated.”—People v. Gallagher, 4 Mich. 256.

California.

The saloon business is “a business in itself dangerous to the morals and good order of the city.”—Foster v. Police Commissioners, 102 Cal. 483.

Idaho.

“It is recognized and also is a well-known fact in history that much evil results from the sale of intoxicating liquors. * * * * The business of selling intoxicating liquors is not considered as of equal dignity, respectability and necessity as that of the grocery, dry-goods or clothing business or many other occupations that might be mentioned, and from time immemorial its prohibition or regulation has been held to be within legislative power under what is known as police power.”—State v. Calloway, 11 Idaho 719, 114 Am. St. Rep. 296.

Colorado.

"These restraints are not like such as restrict the ordinary avocations of life, which advance human happiness, or trade and commerce—that neither produce immorality, suffering nor want. This business is, on principle, within the police powers of the state, and restrictions which may rightfully be imposed upon it might be obnoxious as an illegal restraint of trade when applied to other pursuits."—Adams vs. Cronin, 29 Colo. 488.

(b.) United States Supreme Court.

The foregoing expressions by the State Courts are not only approved, but impregably fortified by the United States Supreme Court.

In the License cases, decided in 1847, 5 How. 504, 12 L. C. Ed. 314, Justice Grier said: "It is not necessary for the sake of justifying the State legislation now under consideration, to array the appalling statistics of misery, pauperism and crime, which have their origin in the use or abuse of ardent spirits."

In the case of *Mugler v Kansas*, 8 Sup. Ct. Rep. 297, Mr. Justice Harlan says: "We can not shut out of view the fact, within the knowledge of all, that the public health, the public morals, and the public safety, may be endangered by the general use of intoxicating drinks; nor the fact established by statistics accessible to every one, that the idleness, disorder, pauperism, and crime existing in the country, are, in some degree, at least, traceable to this evil."

These cases all lead up to the case of *Crowley v. Christensen*, 137 U. S. 86, 11 Sup. Court Rep. 13, which is the most crushing blow ever given to the liquor traffic by any judicial tribunal. Among other things, the Court said:

"By the general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source." * * * * There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the state or of a citizen of the United States."

SOME OBSERVATIONS UNDER THESE OPINIONS.

1. The liquor people complain bitterly of this language of the Supreme Court, and charge that the Court never used such language as that about any other business. This is true, and there are the best of reasons for it.

The Court never used such language as that in regard to a meat shop, for example, because no man ever went to a meat shop and bought tenderloin steak until he got drunk and went home and kicked his wife and children into the street. The Court never used such language as that in regard to the dry goods business, because no man ever bought silks and calicoes for his family until he became a moral vagabond and went out on the street on election day and sold his vote for fifty cents or a few drinks of whiskey.

The Court applies such language only to such business as injures public morals by destroying the character of our citizens.

2. The strength and influence of these judicial opinions consist substantially in the following facts:

(1) These judges are intelligent men. They know the effect of intoxicants upon men personally and collectively.

(2) These judges are impartial. They not only have no financial interest, as a rule, in the business under consideration, but they are under a solemn oath to proclaim and enforce impartially the law of the land.

(3) These judges thus declare the law without any personal or selfish ends in view, although they know that by so doing they are inviting the vindictive opposition of the liquor vote. They do not render these opinions for the love of making political enemies, but out of a high regard for the public welfare, regardless of the political enemies they may make.

(4) These opinions are grounded in the truth, as intelligent men know the truth today. These declarations express the concurrence of opinion of every civilized and Christian community.

(5) The principles of intelligence and morality upon which these opinions are founded, are the very essentials of government. A free people must be moral enough to be honest and just.

(6) By the deliberate edicts of these high courts of sovereign states, and by the crushing denunciation of the highest court in Christendom, the common saloon of today is declared to be a source of *crime and misery* to society. These judicial opinions are a part of the common law of the nation.

When a liquor manufacturer or dealer denounces these opinions as unwarranted by the facts, or as over-severe in their moral tests, and assumes to advise as to what is best for the public welfare, you must remember that there are at least two strong presumptions against him.

(1) There is the presumption of self-interest, because many of them have large fortunes invested in the business, and many others make their bread and butter out of the business. Such interest as that is apt to color testimony. They may be swearing, but they are not under oath, and absolute verity does not attach to their declarations.

(2) There is the presumption of moral disregard for the manner in which they make money, because they know, and in all their defensive arguments admit, that the liquor business is not uplifting. The ablest advocate of the liquor cause never advances any plea for its continuance which claims for the traffic any positive moral good, or which rises above expediency, or the alleged vested rights of a moral wrong, and neither expediency nor any of these so-called vested rights is essential or fundamental to the public welfare. The public welfare is better promoted by their absence than by their presence.

These high judicial authorities ought at least to be persuasive to the average citizen seeking guidance on a serious subject of public importance. The average liquor dealer, wholesale or retail, in devotion to the public welfare, does not rank with our appellate courts. Any citizen honestly vexed with questions or doubts in regard to a proper policy toward sources of crime and misery ought not to hesitate to follow the opinions of our courts rather than to follow the opinions of our saloon-keepers.

4. Organized Political Power.

The liquor business is also an organized political power, dictating policies as far as possible. The brewers have their State Association. The retail dealers have their State Liquor League, and all branches of the liquor trade are represented in the Personal Liberty League. The Brewers Association, the Liquor League, and Liberty League may have some laudable purposes, but if so, those purposes are seldom manifest to the public. And every manifestation of any good purpose always has a selfish end.

The published purposes of the Ohio Liquor League are thus stated in their constitution:

"It shall make all possible effort to get into its folds all of the respectable liquor dealers of the State of Ohio. Its object shall be mutual protection. It will protect its members against unjust persecution as far as possible. It will strive to place in public office men who are known to be fair and liberal minded."

Note their three fold object: To get the respectable dealers together, to protect its members against unjust persecution and to place in office fair and liberal minded men.

Their respectable saloonkeepers will be hard to find, since the United States Supreme Court has said of the best of them, that their places of business are sources of crime and misery to society. Respectability cannot accrue merely from a collection of these sources of crime and misery.

When their constitution says they are organized to protect themselves against unjust persecution they mean that the Liquor League is organized to defend its members against all prosecutions for violation of law. And when they proclaim that they will strive to place fair and liberal minded men in office, they mean that they will put in office men who will not enact new laws against them, nor enforce the laws which we already have.

The purposes of the Personal Liberty League are thus stated: "We declare our opposition to men and measures that favor sumptuary or restrictive legislation which encroaches upon or curtails the personal liberties of our people."

In language such as the above, the Ohio organizations declare their political purposes. The purposes of the liquor combinations in other states are essentially the same, though the avenues of their activities may vary under different circumstances and local conditions.

But the essential purposes of these liquor organizations and their activities in politics may be reduced to three heads, viz:

1. To prevent legislation for the protection of public morals.
2. To defeat men for executive offices who will enforce the law against them.
3. To carry local option and other elections in favor of the saloons.

Moral reform is not the main purpose of these organizations, only a mere incident. Reform was not thought of, until they were convinced by the flashes of lightning and the crash of thunder that a storm was raging. Now the National Brewers Association and some of the State Brewers Associations,

and the Model License League have declared in somewhat similar language that they are in favor of making the liquor business more respectable and in some instances the brewers have caused, or co-operated in causing, some dive keepers to be arrested. These occasional efforts at decency should be given their full value. The chief purpose in them, however, is to cut off the worst part of their own business in order that the people may not so soon become entirely disgusted with the best part of it. These dives, however, are the necessary and legitimate end of any business which is, at its best, a source of crime and misery to society. The brewers cannot clean up much without cutting down their profits and you need not expect them to interfere perceptibly with their own income. They certainly will not destroy their own business. They may be found willing to clean the teeth of the mad-dog that his rabid bite may not produce the quickest possible death, but they will never assist in killing the dog.

The brewers rush into this reform of shutting up the dives with about as much enthusiasm and soul hunger as you would manifest in going to the hospital to have a diseased leg cut off. You would do that only when convinced that the operation was necessary to save life. The brewers have about reached that stage of desperation.

But do not brewers and liquor dealers often contribute to local hospitals and other charities? Grant it, and give full credit for all they do. Do they by these gifts, justify the public sanction of their sources of crime and misery? Do they do as much good by their charities as they do harm by their sources of crime and misery? Until the good at least equals the bad, the weight of the argument is against them. It does not profit to sanction so much evil that a little good may come. Besides, if they devoted their personal energies and business careers to some other and harmless line of business they could have as much money for charities and not get it out of sources of crime and misery.

The latest organization of the liquor forces is under the name of the Personal Liberty League. The Liberty League is a sort of a trust, or combination, of the other liquor organizations of the country. It does the same work formerly done by the Brewers' Association, and the Liquor League. It is the old foe under a new name. The Brewers' Association and Liquor League lost so many battles of late years that a new alignment became necessary.

In adopting this new name, they showed their common dis-

regard for sacred things. Liberty has meant more than property and life to many a loyal patriot, for both property and life have been freely given on many a red battlefield that liberty might live. The tree of liberty has ever been watered by the blood of patriots. Liberty always hath charms for any people, slave or free. So the liquor advocates laid their unholy hands upon that sacred word and sought to stampede the people to their standard on an appeal for liberty. Thus, like the hypocrite in Pollok's "Course of Time," they

"Stole the livery of the court of Heaven
To serve the devil in; in virtue's guise
Devoured the widow's house and orphan's bread."

To have such institutions as saloons in the State is bad enough; to have them organized for political purposes is infinitely worse. A horse thief, or a wife beater, arouses your horror when you encounter them, one at a time, but suppose all the horse thieves in the State should organize a horse thief's league for their mutual protection, and to elect fair and liberal minded men to office.

Suppose all the wife beaters of the State should organize a wife beater's association which should attempt to manipulate politics so as to protect all who exercise the personal liberty of beating their wives. Suppose now those two organizations, on being complained of, should propose to pay the government a fixed sum as a tax for the privilege of doing business: An outraged public sentiment would make short work of both organizations.

These liquor organizations never support a candidate for office who, in their opinion, will enforce the liquor laws that we already have, or who will pass new and stronger ones. They are fighting that their sources of crime and misery may be left undisturbed. They care nothing for the public welfare, or they would voluntarily retire from a business which is a source of crime and misery—from a business which is everywhere detrimental to public morals. They at all times refuse to promote the general welfare by protecting public morals and declare by their conduct that they think it better to protect the saloons, these sources of crime and misery, than it is to protect our homes and our churches, the hope and life of this nation.

Not only do these liquor organizations care nothing for the public welfare, but they have no party principles. One year they are Democrats, the next year Republicans. Their party

affiliations are never determined by political issues but by immoral considerations. In the same election, they support one party in one county and the other party in the adjoining county. They always give their support to the candidate who favors their sources of crime and misery, or who seems least likely to enforce the law against them. Their influence is always on the side of bad political morals. No man ever ran for office on a platform of common decency and law enforcement, who did not incur their organized opposition. They are always a thorn in the flesh to every man, who would seek office on honorable moral grounds, and nothing will so effectually break the power of the saloon in politics as for all patriotic men of all parties to join hands and put them all out of business.

Further Specifications Not Necessary.

These fundamental arguments against the saloon might be amplified in detail by showing the amount of crime, the amount of pauperism, the amount of insanity which can fairly be attributed to the saloon business. To that might be added bewildering statistics as to the millions of money annually wasted by drinkers and the millions more expended by the public in the work of law enforcement and charity.

A detailed discussion of these matters might be profitable, but for the purposes of this argument it will not be necessary to go into detail. Statistics are a fruitful source of controversy. It is an old adage that figures will not lie, but many a lie has been told with figures, and there is so much of indisputable argument ready at hand against the traffic, that we need not argue points on which disputes might arise.

All must admit that a material amount of crime and misery and pauperism and insanity flow from the traffic, that a material amount of money is thus wasted by the drinking part of our population and that a material amount is spent by the government in law enforcement and charity, that would not be thus wasted and expended except as a result of the traffic. This is sufficient to justify our attack on the saloon business. A material amount of crime and misery is more than any man has a right to ask us to stand. Whether the traffic causes all that some people charge against it or not, yet any crime, and any misery, are more than the public is bound to bear. A source of crime and misery can have no right to an existence, even for a day, or to any material extent.

In the case of *Mugler v. Kansas*, already cited, the United

States Supreme Court said it was not necessary for the sake of justifying the Kansas Prohibition law, to array the appalling statistics of misery, pauperism and crime which have their origin in the use or abuse of ardent spirits, and that the public health, public morals and public safety may be endangered by the general use of liquors, and that idleness, pauperism and crime are, *in some degree at least*, traceable to this evil. The court does not ask how much idleness, pauperism and crime can be traced to this evil, nor fix the percentage of disease, pauperism and crime that must be proved against the traffic before prohibitory laws will be justified. If idleness, disorder, pauperism and crime are in some material degree traceable to this evil, that is a sufficient warrant for the public to defend itself against such sources of injury.

Conclusions.

In the light of these principles and facts, what is the place of the saloon in society and government? Where should you class an institution that discourages intellectual development? Where should you class an institution that nibbles away by stealth the morals of its patrons? Where would you class a great commercial enterprise which is branded by the highest court of the land as a source of crime and misery? Where would you class an organized political power that never stood for a moral proposition in the history of the state and nation?

The Mayor of Milwaukee and Chairman Dickey of the Prohibition Party held a couple of joint debates a few months ago to discuss the question whether it was right to prohibit the sale of intoxicating liquors. Any man ought to be able to answer that question who has mental capacity to decide whether it is right to shut up a source of crime and misery.

DEFENSES BY THE SALOON.

Let us now, in the light of these principles of government and under these ideals of the public welfare, examine the more common defenses put forth by the saloon and its friends.

I. Personal Liberty.

One argument put forth by the liquor advocate is that prohibition interferes with their personal liberty.

What do they mean by these two words "personal liberty?" When the words are used by liquor dealers or manufacturers,

they may mean that we have no right to interfere with their business, regardless of its effect upon the general welfare. That proposition will be discussed under a subsequent subdivision of this argument.

When the words "personal liberty" are used by the individual dealer or by some one in his behalf, they mean that the individual claims the right to drink when, where and what he pleases, and as much as he pleases, and that saloons should be permitted to run for his personal convenience and the gratification of his desire to drink. His demand is that we should leave the saloon undisturbed, regardless of the effect upon the public welfare.

This proposition of the liquor people receives but scant consideration in rural communities and among native born American people, but in our large cities and among people of foreign birth or with foreign blood, the situation is materially different. And since our hardest battles are yet to be fought and since these battles will of necessity take place in these big cities and among our citizens of foreign birth and extraction, a careful examination of the proposition is expedient.

As an introductory observation it may be stated that we are not in this agitation seeking to deprive a man of his beverage privileges in his own home nor to interfere with his personal liberty to keep liquor at home, provided his home does not become a place of public resort. We are striking primarily at the open public saloon as a social and political evil, but if, as an incident to closing up these sources of crime and misery, it becomes inconvenient for the drinking citizen to keep his liquor in his home, he must submit to that light affliction for the public good.

As an answer to the merits of the controversy, we claim that these advocates of personal liberty have a mistaken notion of the legitimate scope of personal liberty as defined by the statutes and the court decisions in this country. A few extracts from judicial opinions will show how much personal liberty a citizen really has.

Blackstone's definition of personal liberty, as quoted by Justice Harlan in the Civil Rights Cases, 3rd Sup. Ct. Rep. 42, is as follows:

"Personal liberty consists in the power of locomotion, of changing situation, of removing one's person to whatever place one's own inclination may direct, without restraint, unless by due course of law."

The Supreme Court of Michigan, in the case of Pinkerton

vs. Verberg, 78 Mich. 573, 18 Am. St. Rep. 473, defines the phrase as follows:

"Personal liberty * * * * consists of the right of locomotion—to go where one pleases and when—and to do that which may lead to one's business or pleasure—only so far restrained as the rights of others may make it necessary for the welfare of all other citizens."

In the case of Board of Excise vs. Barrie, 34 N. Y. 657, decided in 1866, several defendants appealed from a conviction for selling liquor without a license, claiming that the law was invalid. The court said:

"Is it not an absurd proposition, that such a law by its own mere force deprives any person of his liberty or property, within the meaning of the constitution, or that it infringes upon either of these secured private rights?

"Yet this is the only ground its violators can occupy to raise any question as to its validity. They are restrained of no liberty, except that of violating the law by engaging in a forbidden traffic; and the assumption is not even plausible that the act works a deprivation of property to any one within the meaning of the constitutional restrictions upon legislative authority. * * * * The necessary powers of the legislature over all subjects of internal police, being part of the general grant of legislative power given by the constitution, cannot be sold, given away or relinquished. Irrevocable grants of property and franchise may be made, if they do not impair the supreme authority to make laws for the right government of the state, but no one legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police."

The Ohio Supreme Court, in the case of Palmer vs. Tingle, 55 O. S. 441, defines liberty as follows:

"The word 'liberty' as used in the first section of the Bill of Rights, does not mean a mere freedom from physical restraint or state of slavery, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, *subject only to such restraints as are necessary for the common welfare.*"

The same Court in the case of State vs. Powell, 58 O. S. 344, says:

"Liberty, as understood in this Country, is not license, but liberty regulated by law. The personal liberty of every man is subject to such reasonable regulations as, in the wisdom of the legislature, are regarded as necessary to promote, not only the peace and good order of society, but its well-being."

In the case of *State vs. Kreutzberg*, 114 Wis. 530, 91 Am. St. Rep. 939, the Wisconsin Supreme Court says:

"The very existence of government renders imperative a power to restrain the individual to some extent. This is called, 'the police power.' * * * * By the constitution is granted the police power—the power to restrain the individual of some measure of his liberty of action and of his property; but this goes no further than to authorize the enactment of laws necessary to a reasonable protection of the safety and welfare of the general community, and not depriving the individual of liberty in the constitutional sense. * * * * Absolute freedom in one is necessarily subversive of liberty for those with whom he comes in contact, unless such others be strong enough to resist and curtail his will.

"The police power of the State is co-extensive with self-protection, and is not inaptly termed the law of over-ruling necessity. It may be said to be that inherent and plenary power in the state which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society. It is said to be limited only by the legislative discretion, provided its acts do not go beyond the great principle of securing the public safety."

In the case of *Kentucky Board of Pharmacy v. Cassidy*, 74 S. W. 732, the Kentucky Court of Appeals cites with approval the language of Mr. Justice Field in *Crowley v. Christensen*, 137 U. S. 89, to the effect that liberty is not license to act according to one's own will—"It is, then, liberty regulated by law."

In *United States v. Hudson*, 65 Fed. Rep. 74, the U. S. Dist. Court for Arkansas, by Parker, J., says:

"All the liberty we know anything about under this government is liberty regulated by law. Everything else is licentiousness, because it gives to each person the right to trample upon the rights of all others."

In the case of *McLean v. Arkansas*, 29 Sup. Ct. Rep. 208, Mr. Justice Day thus limits the liberty of the citizen:

"The liberty secured by the constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be at all times, and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good."

"It is, then, the established doctrine of this court that liberty * * * * is subject to restrictions passed by the legislative branch of the government in the exercise of its powers to protect the safety, health and welfare of the people."

In *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746, Field, J., says:

That among the inalienable rights as proclaimed in the Declaration of Independence, "is the right of men to pursue any lawful business or vocation in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment. The common business and callings of life, the ordinary trades and pursuits which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions."

In *Allgeyer v. Louisiana*, 165 U. S. 578, 589, 17 Sup. Ct. Rep. 427, the Court said, by Mr. Justice Peckham:

"The liberty mentioned in that (fourteenth) amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

In *Jacobson v. Massachusetts*, 25 Sup. Ct. Rep. 358, 361, Harlan J., says:

"The liberty secured by the constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury which may be done to others. This Court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the state'."

In *Crowley v. Christensen*, 137 U. S. 86, 89, 11 Sup. Ct. Rep. 13 the U. S. Sup. Court said: "The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community.

Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is, then, liberty regulated by law."

Under these principles the U. S. Supreme Court 25 Sup. Ct. Rep. 358 upheld a statute of Massachusetts, which required the inhabitants of a city or town to be vaccinated when, in the opinion of the Board of Health, vaccination was necessary for the public health or the public safety. The Court further says: "Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of the members." * * * "It was the duty of the constituted authorities primarily to keep in view the welfare, comfort and safety of the many, and not permit the interests of the many to be subordinated to the wishes or convenience of the few."

In the Kansas Prohibition cases in 1887, the brewers' attorneys argued that, having erected a plant suitable only for the making of beer, the owner had the personal right to manufacture and sell for beverage purposes. The court met the argument fairly in this language: "And so, if in the judgment of the legislature, the manufacture of intoxicating liquors for the maker's own use as a beverage, would tend to cripple, if it did not defeat, the efforts to guard the community against the evils attending the excessive use of such liquors, it is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question. So far from such regulation having no relation to the general end sought to be accomplished, the entire scheme of prohibition, as embodied in the constitution and laws of Kansas, might fail, if the right of each citizen to manufacture intoxicating liquors for his own use as a beverage were recognized. Such a right does not inhere in citizenship. Nor can it be said that government interferes with or impairs any one's constitutional rights of liberty or of property, when it determines that the manufacture and sale of intoxicating drinks, for general or individual use, as a beverage, are, or may become, hurtful to society, and constitute, therefore, a business in which no one may lawfully engage. Those rights are best secured, in our government, by the observance, upon the part of all, of such regulations as are established by competent authority to promote the common good. No one may rightfully do that which the law-making power, upon reasonable grounds, declares to be prejudicial to the general welfare." *Mugler v. Kansas*, 8 Sup. Ct. Rep. 297.

In the case of *Crowley vs. Christensen*, 137 U. S. 86, 11 Supreme Court Reporter 13, the U. S. Supreme Court says:

"It is urged that as the liquors are used as a beverage and the injury following them, if taken in excess, is voluntarily inflicted and is confined to the party offending, their sales should be without restrictions, the contention being, that what a man shall drink equally with what he shall eat is not properly a matter for legislation. There is in this position an assumption of fact which does not exist—that when the liquors are taken in excess, the injuries are confined to the party offending. The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens, and in self-abasement, which it creates. But, as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him."

The one man who had the greatest degree of personal liberty was Adam, and he lost his soon after the Lord made Eve. Since then each succeeding generation has enjoyed less and less of this alleged divine attribute of human life.

The weakness of their whole argument consists in the fact that they are insisting upon the liberty to violate the law, to override the will of the majority, and to injure the public welfare. But no man has any divine right to get drunk. Even though a man may not abuse the use of liquor himself, he has no right to have a saloon maintained where other people may, and do, indulge to excess and which becomes a source of crime and misery to society. Every one of these definitions of liberty, expressly declares that the citizen must submit to all such restraints as are necessary and expedient for the public welfare.

The gambling laws illustrate this fundamental principle. The reasonableness of laws against gambling is never questioned. Such laws are not regarded as restraints upon personal liberty.

The evils of gambling consist (1) in the danger of impoverishment through reckless risk; (2) the demoralizing effect of gain without work; (3) the habit of relying upon chance instead of labor as a means of acquiring property.

The man who chafes under the so-called paternalism of liquor laws, does not seem to remember that they operate upon the same elements in human nature as the gambling laws. These gambling laws protect the individual from temptation and loss from his own acts—acts, too, which do not affect any other person's liberty of action. The conduct of the gambler affects him and those who are dependent upon him. The danger of impoverishment through gambling risks is no greater nor more likely to result disastrously

than the danger of impoverishment through the spending of your money in a saloon. The demoralizing effect of making money without work is no worse than the demoralizing effect of loafing about a saloon. The habit of relying upon chance instead of labor as a means of acquiring property is no worse than the habit of the saloon loafer to abandon all effort to acquire property and to rely upon his wife to pay the rent and make a living for him over the wash tub.

The government does have a right to protect, against his own acts, the citizen who will not protect or restrain himself. If the government may exercise such restraint in regard to gambling, why may it not do so in the case of other bad habits and practices? The control of the liquor traffic protects the community from crime and the burdens of pauperism. To do these things is a right of self-protection which cannot be contested. The control of the liquor traffic also protects many men from their own weaknesses, resulting in drunkenness and a wasteful expenditure of their own time and money. This right cannot be contested. And, finally, the control of the liquor traffic gives the majority the right to impose upon the minority the sentiments of the majority as to what is right and best for the public welfare.

The Court recognizes two effects of liquor when taken in excess, one personal, one social. Liquor, when taken in excess, undermines health, weakens morals and creates self-abasement. These effects are confined to the drinker himself. But it also leads to neglect of business, waste of property and general demoralization. These effects reach those who are immediately connected with and dependent upon the drinker.

The Court further recognizes the doctrine necessarily implied in the language above quoted, that a man has no personal liberty to disgrace, debase and bring to want those who are dependent upon him. He has a personal right to bring up his children to a useful and virtuous life, but he has no personal right to disgrace them nor to so spend his substance as to make them a charge upon the public.

The advocate of personal liberty bases his argument on the proposition that his drinking is purely a personal matter, and does not concern the public, but the anti-saloon advocate bases his argument on the proposition that total abstinence is justified by the effect of liquor upon those who drink it, and the Courts hold that regulation and prohibition of the liquor traffic are justified by the effect of liquor upon those who do not drink it. Those who do not drink are a part of society and have rights which cannot be lost nor taken away.

The advocate of personal liberty is out of harmony with our political institutions and sets at naught the sacred traditions of the majority rule. Anti-saloon laws are not thrust upon the citizen by the arbitrary will of some despotic tyrant or absolute monarch, but by the will of the majority evidenced by the act of an elective General Assembly or by the direct vote of the people. When people acting thus in a constitutional manner, adopt measures to protect public morals, it is not becoming in a dissatisfied minority to complain that their personal liberty is invaded. They ignore the relation which a citizen sustains to society and to those who are dependent upon him.

A minority residing in any political unit, and enjoying the general protection afforded by an organized local government, should not be permitted to defy the will of its constituted authorities, acting in good faith for all, under the legislative sanction of the state. If such be the privilege of a minority, then a like privilege would belong to each individual of the community and the spectacle would be presented of the welfare and safety of an entire population being subordinated to the notion of a single individual. It is not an element of liberty secured by the constitution of the United States that one person, or a minority of persons, residing in any community, and enjoying the benefits of its local government, should have the power thus to dominate the majority when supported in their action by the authority of the state.

President Lincoln, in his first inaugural address, in well chosen words, stated the necessity for majority rule as follows, viz: "A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it, does, of necessity, fly to anarchy or to despotism. Unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left."

In order to make their argument hold good, these advocates of personal liberty must make it appear that the physical and moral welfare of the citizen is not a sufficient warrant for interference by the Government; that injury to the social welfare is not adequate ground on which to interfere with his so-called rights, and that every man has a right to decide for himself how far he will indulge in the vice of drink.

These advocates of personal liberty in maintaining such propositions deliberately shut their eyes against the laws and decisions of every State in the Union. Every state has recognized the right

to restrain or prohibit the liquor traffic. This recognizes the right of the government to protect the physical and moral welfare of the citizen and to promote the social welfare of the people as a whole and to decide that no man may indulge in the vice of drink to such an extent that he becomes intoxicated.

Another false argument on this subject is that if the right be recognized to regulate or prohibit what a man shall drink, there is nothing to prevent the government from regulating what a man shall eat. This argument, however, cannot be seriously proposed. It is advanced, not for the purpose of convincing anybody, but in the hope that the indifferent may be confused. There is nothing which we eat that destroys intelligence and morality and is a source of crime and misery to society, and is an organized power for corruption in politics, such as liquor. And if, in the triumphs of science in future years, someone should invent a whiskey doughnut or a beer pretzel which contained in concentration, the intoxicating force of whiskey or beer, and the eating of such doughnuts and pretzels should produce the same amount of crime and misery and injury to society that whiskey and beer now produce, then the Government would have the same right to regulate, restrain or prohibit the traffic in these whiskey doughnuts and beer pretzels, as it now exercises in the regulation, restraint and prohibition of whiskey and beer. But so long as what we eat does not become a source of crime and misery to society, there is no reason why the Government should interfere with our eating, and so long as the preservation of society does not demand it, no law will be enacted regulating what we shall eat.

Oftentimes the man who prates loudest about his personal liberty, is the man who has a wife and half a dozen children. The wife and children know that if he is permitted to gratify his appetite, it means hunger and misery to them. Shall the Government regard only the appetite of the one and disregard the needs of the other six or seven, and perhaps make them a public charge, that the one may enjoy his personal liberty? So when the sot complains that you are about to interfere with his personal liberty to be a sot, I would have you remember also the personal liberty of his wife, and children, and that getting drunk is not an inherent attribute of liberty.

It follows, therefore, that personal liberty is no more sacred than private property. The personal right to one's liberty is no greater than the personal right to one's property. Personal liberty when used for gambling purposes, for example, is no more sacred than personal property, when used for gambling purposes. No man has, as a matter of law, any personal right to be immoral, or

to conduct an immoral business, when his immoral conduct or business injures others. When a man begins to do things which injure others, his personal liberty ends. Personal liberty of the individual cannot prevail against the public welfare.

II. Deprives Laborers of Their Bread.

Another objection much like the personal liberty proposition, is that if we vote the saloons out and prohibit the manufacture of liquor, we deprive many people, bartenders and brewery employees, of their means of making a living. They argue that it is inhuman to deprive these employees of their bread and butter.

This charge against us is a serious one, if true, and without justification. But it is not true in fact, because we do not, by voting a county or state "dry," deprive any man of his bread and butter. The most that can be charged against us is, that a few men may have to change their methods of getting their bread and butter, by changing their employment. This change is justified by the good results achieved.

We have a right to object even to the way people get their bread and butter, if the business engaged in, or the methods used by them to get their own bread and butter, take bread and butter out of the mouths of others.

That is exactly the charge made against the saloon business. The Supreme Court recognizes the fact that liquor drinking injures health, weakens morals, leads to neglect of business, waste of property and general demoralization, and affects those who are immediately connected with and dependent upon the drinker. The pickpocket, the burglar or the horse thief, may argue that they have chosen these methods of getting their bread and butter, and have no other means of getting a living, but we make short work of their arguments. No man ever had any right to build up a fortune for himself on the misfortunes of others. A man's right to make money is subject to the right of society to make men. It is high time that we announced these doctrines and taught them to the people.

The right, inherent in the people, to protect public morals, gives us the right to make a man change his employment when that employment becomes detrimental to public morals. A citizen has no more right to do an injury to society by his means of personal employment, than he has by the use of his private property, and we have already seen that a man may not so use his property as to injure another. The words of the United States Supreme Court exactly cover the case in point; "If the public safety or

the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer."

In the case of *State v. Gray*, 61 Conn. 46, the Supreme Court of that state said: "Nor does the constitution recognize that a man shall have the inviolate right to a means of livelihood the exercise of which will deprive others of their means of livelihood, and bring shame, disgrace and ruin upon the community. Such a contention is not to be tolerated."

These men can find other employment, equally remunerative and far more honorable to themselves and more useful to the community. They can find some business which will not destroy the moral character of their patrons. We must remember that there is bread and butter on both sides of the proposition. On one side is the saloonkeeper and perhaps one or two bartenders and their families. On the other hand are the hundreds of drinkers and their families, and two or three are not entitled to your sympathy as against the welfare of the hundreds of others, most of whom are helpless sufferers, as long as we permit the saloons to run.

If we continue to tolerate the saloon, many more people will be deprived of bread and butter than will be supplied with bread and butter. Therefore, on the basis of the greatest good to the greatest number, we are justified in closing up the saloon. You have a right to protect public morals, no matter what happens to the people who purposely or negligently block the way.

From the despairing wail of the "wets," you would expect to see armies of former saloon and liquor employes tramping the streets of every "dry" city and thronging the highways of every "dry" state, begging for work or for bread. To be compelled to beg for bread is pitiable, but to be compelled to beg for work is infinitely horrible. No such direful calamity ever befell any people, as the direct or indirect result of voting out the saloons. Experience is usually wiser than mere prediction. The certainties of experience are a safer guide than unfulfilled prophecies of disaster. Any inconvenience to these men is only an incident, and not the main purpose of the law, and such inconvenience is only temporary, and no county or state in the whole Union can be cited in proof of their claim that bread and butter are not as plentiful in "dry" territory as in "wet."

Progress in things material as distinguished from things moral, has often deprived men of their bread and butter as effectually as prohibition deprives these saloon employes of their bread and butter. Labor saving machinery has put more men

out of a job—out of harmless employment—than prohibition ever did. Take one illustration:

When I was a boy a railroad was constructed near my home. They cut through a hill and filled up an adjoining valley. An army of Irishmen with picks and shovels and mules and carts dug the dirt out of the cut and dumped it on the fill. A few years ago the railroad company wanted to straighten the road through the hill and raise the fill. They made a new cut. Instead of the old army of Irishmen, the company brought a modern steam shovel or two, a locomotive and a train of flat cars. With a few movements of the shovel they loaded the cars and then hauled the dirt to the fill. There they attached the locomotive to a giant plow or scraper and in a few moments more the whole train was unloaded, and that old army of Irishmen were deprived of their bread and butter as effectually as any bartender or saloon employee is deprived of his.

If men must yield their personal liberty to material progress to such an extent that they must seek some other way of getting their bread and butter, then for a stronger reason, moral progress may make an equal demand for the benefit of the public welfare. In deciding how a citizen may earn his bread and butter, the greatest good to the greatest number is still the controlling principle.

III. Rights of Property.

Another objection is that if you vote the saloons out, the saloon fixtures will become useless and unsaleable, and the money invested in the manufacture of liquors will become unprofitable, and thus the retailers and manufacturers will be deprived of their property without compensation or due process of law.

A sufficient answer to this objection is that the United States Supreme Court has already decided the point in favor of the "drys." It is fundamental that no person shall be deprived of his property without due process of law. The liquor advocates always lay great emphasis upon this proposition. But it is equally fundamental that all property is held under the implied obligation that the owner's use of it shall not be injurious to the community. This proposition, the liquor advocates always overlook.

In the case of *Menken vs. City of Atlanta*, 78 Ga. 677 and 678, the Supreme Court of that State passed upon a local option law enacted by the Georgia Legislature. A party had complained that his brewery was rendered unproductive by the enforcement of the local option law and claimed that his property had been damaged within the meaning of the State Constitution. In commenting upon this case, the Supreme Court said:

"There has been no physical interference with the brewery, no trespass or tort upon it, no change in its physical surroundings, or in the means of ingress and egress. It is as sound and complete in every respect and as fit for enjoyment, use and disposition, with this law in force, as it would be without it. No doubt its value is greatly impaired, and impairment of value is often the essence of legal damages. No doubt, too, that the impaired value of this property is a remote consequence of the law, and that were the law repealed, the value would be re-instated as it was before. But while to lessen the value of property by changing its physical condition, or by subjecting it directly to new physical conditions of a hurtful character is to damage it, to reduce its value indirectly and incidentally by the casual effects of a law passed for a wholly different subject, is not to damage it within any legal or constitutional sense of the term. Rarely, perhaps, does any new law which acts with vigor upon commerce, local or general, fail to impair the value of more or less property. Surely the damage clause in our new constitution was not intended to make the state or the legislature an insurer against all shrinkage of values that might result from the passage of laws intended for the public good. Can it be seriously thought that the State must literally pay its way to the establishment of a sound and wholesome system of interior police and public order?

"The local option law rests in no degree upon the power of eminent domain. It does not contemplate either the taking or the damaging of anything. It is an exercise of the police power of this commonwealth, pure and simple. The incidental effects upon the value of this brewery and its fixtures result not from any interference with the property, but solely from the inability of the owners to adjust their old business to the new law. These effects, if they can be called damage at all, are *damnum absque injuria*. The law does not take or damage the property of these owners for the public use, but only prevents them, to a certain limited extent, from taking or damaging the public for their use. This is their real grievance, and for that they have no remedy. Where business and law conflict, it is the business that must give way, not the law."

In the State of Ohio, the Constitution contains a provision which forbids the licensing of the traffic, but authorizes the legislature to provide by law against the evils resulting from the traffic.

In the case of *Adler vs. Whitbeck*, 44 O. S. 574, the Supreme Court of Ohio declared that the provision of the Constitution above recited "has stood since its adoption as a perpetual admonition to all persons engaging in this traffic, that in doing so, they

place their property invested in the business, subject to the power of the General Assembly to provide against the evils resulting from the traffic."

In the case of *State vs. Calloway*, 11 Idaho 719, 114 American State Reports, 295, the Supreme Court of Idaho, says:

"Prohibition of the use of property for purposes that are declared by valid legislation to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of the property for public benefit or without due process of law. The above principles are amply supported by reason and by a long line of decisions. The business of manufacturing and selling intoxicating liquors is one that history and experience show requires legislative restraint and supervision, and even if the manufacturers have erected large plants for the manufacture of such liquors in any State, the Legislature of such State may enact a prohibition law and make it unlawful to manufacture such liquor."

This question was raised in the *Kansas Prohibition* cases and every phase of it was pressed hard upon the Court. United States Senator Vest of Missouri, who represented some of the brewers, argued that the *Kansas* prohibition law deprived the brewers directly and absolutely of their property, without due process of law; that by the enactment of this statute the property was reduced in value by the direct prohibition of the real and primary use; that to destroy the right to manufacture beer for a beverage is to deprive the owner of his property, although he is left the right to manufacture it for other purposes, since that is the ordinary, usual, and principal use of beer, and that this is an attempt not merely to legislate for the future but an attempt to destroy vested rights by legislative enactment without compensation, and without due process of law.

Joseph H. Choate, counsel for certain other brewers involved in the same case, argued that the *Kansas* law deprived his clients of their liberty and property, and abridged their privileges and immunities as citizens of the United States; that at the time of the passage of the act complained of, it was one of the fundamental rights of his clients as citizens, to manufacture beer, and to use their brewery for that purpose; that the State could only restrain this right by virtue of the police power, which could only be exercised to the extent reasonable and necessary for the preservation and promotion of the morals and health of the people; that this law goes further than that and destroys their property without compensation.

The Court met these arguments in a full discussion of all the

principles involved. The argument of the Court ought not to be abridged or condensed. The language of the Court is as follows:

"Upon this ground, if we do not misapprehend the position of defendants, it is contended that, as the primary and principal use of beer is as a beverage; as their respective breweries were erected when it was lawful to engage in the manufacture of beer for every purpose; as such establishments will become of no value as property, or, at least, will be materially diminished in value, if not employed in the manufacture of beer for every purpose—the prohibition upon their being so employed is, in effect, a taking of property for public use without compensation, and depriving the citizen of his property without due process of law. In other words, although the State, in the exercise of her police powers, may lawfully prohibit the manufacture and sale, within her limits, of intoxicating liquors to be used as a beverage, legislation having that object in view cannot be enforced against those who, at the time, happen to own property, the chief value of which consists in its fitness for such manufacturing purposes, unless compensation is first made for the diminution in the value of their property, resulting from such prohibitory enactments.

"This interpretation of the fourteenth amendment is inadmissible. It cannot be supposed that the States intended, by adopting that amendment, to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community. In respect to contracts, the obligations of which are protected against hostile State legislation, this Court, in *Union Co. v. Landing Co.*, 111 U. S., 751, 4 Sup. Ct. Rep., 652, said that the State could not, by any contract, limit the exercise of her power to the prejudice of the public health and the public morals. So, in *Stone v. Mississippi*, 101 U. S., 816, where the constitution was invoked against the repeal by the state of a charter, granted to a private corporation, to conduct a lottery, and for which that corporation paid to the State a valuable consideration in money, the Court said: 'No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. * * * Government is organized with a view to their preservation and cannot divest itself of the power to provide for them.' Again, in *Gas Light Co. v. Light Co.*, 115 U. S., 650, 672, 6 Sup. Ct. Rp., 252: 'The constitutional prohibition upon State laws impairing the obligation of contracts does not restrict the power of the State to protect the public health, the public morals, or the public safety, as the one or the other may be involved in the execution of such contracts. Rights and privileges arising from contracts with a State are subject to regulations for

the protection of the public health, the public morals, and the public safety, in the same sense, and to the same extent, as are all contracts and all property, whether owned by natural persons or corporations.'

"'The principle that no person shall be deprived of life, liberty, or property without due process of law was embodied, in substance, in the constitutions of nearly all, if not all, of the States at the time of the adoption of the fourteenth amendment; and it has never been regarded as incompatible with the principle, equally vital, because essential to the peace and safety of society, that all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community. *Beer Co. v. Mass.*, 97 U. S. 32.'"

And the court, speaking directly of the breweries which were, or might be rendered unprofitable by the enforcement of the prohibition law, continued thus: "As already stated, the present case must be governed by principles that do not involve the power of eminent domain, in the exercise of which property may not be taken for public use without compensation. A prohibition simply upon the use of property for purposes that are declared by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit. Such legislation does not disturb the owner in the control or use of his property for lawful purposes, nor restrict his right to dispose of it, but is only a declaration by the State that its use by any one, for certain forbidden purposes, is prejudicial to the public interests. Nor can legislation of that character come within the fourteenth amendment, in any case, unless it is apparent that its real object is not to protect the community, or to promote the general well-being, but, under the guise of police regulation, to deprive the owner of his liberty and property, without due process of the law. The power which the States have of prohibiting such use by individuals of their property, as will be prejudicial to the health, the morals, or the safety of the public, is not, and, consistently with the existence and safety of organized society, cannot be, burdened with the condition that the State must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community. The exercise of the police power by the destruction of the property which is itself a public nuisance, or the prohibition of its use, in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process

of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner. It is true, when the defendants in these cases purchased or erected their breweries, the laws of the State did not forbid the manufacture of intoxicating liquors. But the State did not thereby give any assurance, or come under obligation, that its legislation upon the subject would remain unchanged. Indeed, as was said in *Stone v. Mississippi*, 101 U. S., 814, the supervision of the public health and the public morals is a governmental power, 'continuing in its nature' and 'to be dealt with as the special exigencies of the moment may require;' and that, 'for this purpose the largest legislative discretion is allowed and the discretion cannot be parted with any more than the power itself.' So in *Beer Co. v. Massachusetts*, 97 U. S., 32: 'If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the legislature cannot be stayed from providing for its discontinuance by any incidental inconvenience which individuals or corporations may suffer.'"

No State is under any contract with its citizens, either express or implied, to refrain from passing laws for the purpose of securing the public health or of preserving public morals, no matter how large a class the passage of such laws may embarrass or bankrupt. And no State will refrain from the passage of such protective laws unless it is in the hands of unprincipled men. "Rights and privileges arising from contracts with the State are subject to regulations for the protection of the public health, the public morals and the public safety." *Gas Co. v. Light Co.*, 115 U. S. 650, 6. Sup. Ct. Rep., 262.

The exercise of legislative power by the States in securing the public safety, health and morals, does not conflict with any provision of the national constitution. "The governmental power of self-protection cannot be contracted away, nor can the exercise of rights granted, nor the use of property, be withdrawn from the implied liability to governmental regulation in particulars essential to the preservation of the community from injury."

New York & N. E. R. Co. v. Town of Bristol, 14 Sup. Ct. Rep. 440.

No matter how long, nor how profitably, these liquor manufacturers and dealers may have used their property for such purposes, they cannot, by such use, even under the permission of the state, acquire any rights, which subsequent legislatures cannot annul if the public health or morals will be promoted thereby. "One legislature cannot so limit the discretion of its successors that

they may not enact such laws as are necessary to protect the public health or the public morals."

N. O. Gas Light Co. v. La. Light Co., 6 Sup. Ct. Rep. 262.

"The truth is, that the exercise of the police power often works pecuniary injury, but the settled rule of this court is that the mere fact of pecuniary injury does not warrant the overthrow of legislation of a police character." * * * * "Each individual holds his property subject to the ordinary and reasonable exercise of the police power, and the fact that its exercise may in a particular case work pecuniary injury was adjudged insufficient to stay the legislative action."

L'Hote v. New Orleans, 20 Sup. Ct. Rep. 792.

In the case of Northwestern Fertilizer Co. v. Hyde Park, 97 U. S. 659, a fertilizer plant had been constructed under the authority of the State legislature outside the then limits of the city of Chicago, and where there was no population. In the course of years the village of Hyde Park grew up around the works of the company and passed an ordinance to suppress these works. The United States Supreme Court held the ordinance valid. "Although there was a charter right to maintain these works, and although when established they were located in a territory in which there was no population, yet when the population had gathered around them, the police power of the state was held sufficient to stop their existence, and that without compensation to the owner. The pecuniary injury which directly resulted to the company from the stoppage of its works was held no bar to the police power of the State."

L'Hote v. New Orleans, 20 Sup. Ct. Rep. 792.

Therefore, in the light of these authorities, let not your heart be troubled, neither let it be afraid, when the liquor dealer complains that his property is being taken from him without compensation or due process of law. He is not deprived of his property at all, but is only prevented from using it to the public injury. He is not entitled to any sympathy on that ground. No man has any right to ask your sympathy against any law, which merely prevents him from injuring public morals. If men will persist in investing their money in a business which, because of its injury to public morals, may be prohibited by law, they have nobody to blame but themselves and they have no right to your sympathy against statutes so necessary to the public welfare. It is our moral, as well as our patriotic duty to give our active, positive support to every law which promotes the public welfare by protecting public morals.

IV. Must Have the Revenue.

Still another objection by the liquor advocate is that we cannot get along without the saloon *revenue*. The Philadelphia Liquor Dealers' Association not long ago expressed the objection in the following words: "If it were not for the revenues that the saloons of this country are now paying the Government, heaven only knows what would become of the tax payer. The millions of dollars we pour annually into the National and State treasuries help to lower the tax rates and virtually support the communities. To eliminate the saloon would be to undermine the foundations of the country's revenues."

It is refreshing to see the breezy replies to this declaration, made by two great secular papers.

The Philadelphia North American, thus makes reply, viz:

"This statement is at once an insolence and an untruth. The sanctuaries of this nation are not built upon pillars made of kegs and barrels. Something besides bottles stands between America and bankruptcy. * * * But they forfeit the privilege of tolerant treatment when they make the statement quoted. They had no right to make it. Because it is untrue, because they know it is untrue, because it is an offensive untruth to every enlightened citizen; because it is a palpable and vicious attempt to deceive those of the people who are unacquainted with the real economic, political and industrial conditions of the country."

The Indianapolis News makes its rejoinder as follows, viz:

"One thing is certain; this saloon question will in no wise be settled on the money basis. It is beyond question that any suggestion of revenue will count only as an irritant; for the change that seems certain to be wrought in the liquor business by the wave of reform that is sweeping the country will be for moral reasons. The saloons will be restricted and in many cases abolished for moral, not material reasons. They may cease to exist outside of large cities, and the whole traffic may come to be done under conditions that will align it with the traffic in poisons and high explosives"

In the trial of the "License Cases" in 1847, the saloon advocates put the same argument up to the United States Supreme Court; they claimed that to prohibit the traffic in the States interferes with the right of the national government to collect its revenue. The temperance forces then argued that a diminution in the consumption of liquor does not necessarily reduce the amount of revenue, because a sober people will accumulate more wealth than will people who spend their money for drink, and such an accumula-

tion in the increase of property will add to the revenue in other forms, so that there will be an increase rather than a decrease.

The Court supported and confirmed this argument by the following comment: "The diminution of the revenue arising from this exercise of local power (meaning the police power) would be more than repaid by the beneficial results. By preserving as far as possible, the health, the safety and moral energies of society, its prosperity is advanced." And Justice Grier, in his part of the opinion, said: "If a loss of revenue should accrue to the United States from a diminished consumption of ardent spirits, she will be the gainer a thousand fold in the health, wealth and happiness of her people."

With patriotic citizens searching for the truth, these declarations of the Supreme Court ought to be quite as persuasive as the pronouncement of the Philadelphia Liquor Dealer's Association.

Another answer to this revenue argument is that several states and literally hundreds of counties in various parts of this nation have voted out the saloons, and have not suffered any irreparable injury to the public revenues, in consequence of such action. If the foundation of our revenues would be undermined by voting out the saloons, then in some of these states, and some of these counties, there would be at least some intimation of collapse, but you have yet to hear of the first county or state that has not been able to support its institutions and maintain its financial honor, after the saloons have been put out.

Another answer to this argument is that when the saloons are put out, we will not need so much revenue. In all the large cities the police force and the expense of police courts, the expense of the county criminal courts, the support of jails and infirmaries and the demands of public charity, would be so reduced that the expenses of them could be easily met by other means.

Still another answer is that new sources of revenue will make up a further part of that now derived from the saloon. When a saloon is put out some legitimate business will come in and pay the regular and ordinary tax and thus make up some more of the lost revenue.

The men who patronize the saloon will, after it is driven out, spend less money for drink and more for food and clothing, thus increasing legitimate trade in those lines.

General business will be increased and pay more taxes. A non-drinking community will lay up more money than a drinking community, and tangible taxable property will be then increased by saving among those who formerly spent their money for drink.

Any disturbance of public revenues from putting out the sa-

loons could be only temporary at most. A policy of government which preserves the moral and material forces of the people cannot, for that reason, prove disastrous. No man ever ruined his business by throwing off a bad habit. Our saloons are the bad habits of our municipalities. It will no more hurt our cities to lay aside a bad habit than it will the individual to lay aside a bad habit.

The grunting, complaining condition of some of our cities is well illustrated by a man who was getting over a big drunk. Such a man feels exceedingly groggy and depressed, and will often declare that he cannot live unless he can get something more to drink. Such dreadful prophesies, however, never come true, and experience has shown that after liquor is taken away from them, they will come to themselves and be more vigorous and healthy than they were while they were drunk. The writer knew one man who used to sober^u up by drinking essence of peppermint. He thought it indispensable that he must have something like that for his stomach and nerves.

The cities of Ohio have been on a drunk for many years. It is no wonder that some of them feel unnatural and disturbed when they find themselves deprived of liquor, but if the people will simply stand firm for only a few months until these cities have a chance to become thoroughly sober, they will soon find out that they can get along all right without the liquor revenue.

But even if the saloon revenue was not all made up by savings and increases in other ways, it would be far better for the public welfare to raise the revenue by the taxation of legitimate business. It is incomparably better to pay tax in money than to pay it in boys.

In the local option campaign at Steubenville, the children were parading with flags and banners with appeals to vote "dry." The liquor people sought to break up the parade by throwing handfuls of pennies and nickels at the childrens' feet, hoping the little ones would begin a scramble for the coins and stop marching. But the little patriots marched right on and trampled the tainted money under their feet. May the voting patriots of our State be as loyal as these children! But there are many voters, who, attracted by the jingle of the pennies and nickels of taxes, are unable to keep step with the march of these children.

Down in Athens County during the temperance campaign, one farmer said he thought he would vote "wet" because the loss of saloon revenue would raise his taxes. A neighbor asked him how much he thought his taxes would be raised. He answered: "About a dollar a year." This neighbor then asked what he would take to vote "dry." With a show of indignation, he replied: "Do you

think you can buy my vote?" His neighbor replied: "I do not know, but from the way you were talking, you were about to vote with the "wets" to save a dollar and I thought I might get you pretty cheap."

The man, who, in order to save a dollar, votes to fasten upon the community a source of crime and misery, has possibly not stopped to reflect that, for that price and by that act, he is also betraying his country.

My final answer to the revenue argument is that the saloon is a source of crime and misery to society, and no source of crime and misery can be the foundation of our revenues. No continuous injury to public morals can be compensated in money. This nation cannot permanently endure, if it adopts any source of crime and misery as a basis of its revenues.

Let us get back to our first principles. Morality is one of the essentials of citizenship in a republic. The immoral man does not help manage the government at all, and any institution which produces immoral men is an enemy of the State.

So long as we use the saloon as a source of revenue, we must submit to the crime and misery produced by the saloon. Anything which produces crime, produces immorality, because crime is only immorality in action.

You now have your saloon revenue and propose to expend it in the best way you can. But after you have done your best, there is one thing which you cannot do, with saloon revenue. That one thing is of more importance than all the other things which you can do—you cannot, by the use of that revenue, reproduce what the saloon destroys. The saloon destroys moral character. Money cannot buy moral character. You cannot, by the expenditure of money, reproduce in the character of your citizens the moral values that were destroyed by this source of crime and misery, out of which you got the revenue into the treasury. So long as you trade public morals for public money, the balance of trade is bound to be against you.

The fatal fallacy in the whole revenue argument is the fact that the revenue, when obtained, cannot pay for, nor restore, the damage done in getting it. It is fatally wrong to try to enrich our treasury by debauching our citizenship. We cannot permanently endure a revenue system which destroys the moral character of our people. It is like a man who would try to fatten a lion by feeding him at the head end with raw meat cut from the flank of the same lion. The lion might get two square meals that way, but it would soon be apparent that the destructive processes were far greater than the recuperation produced. The relief would be

only temporary, while the injury would be permanent. The same result will follow where we try to feed the body politic on self-destroying saloon revenue. No man can long quench his own thirst by drinking his own blood. That is what the saloonkeeper asks us to do when he asks us to trade the morals of our people for revenue.

That man would be branded as insane who would burn down his own house to get warm. He could in that way produce one good fire, and warm himself once, but he at the same time would destroy his shelter. After he had warmed himself once in this manner, you would find him seated out of doors freezing to death in the ashes of his own folly. He would destroy the very thing which is necessary to his continued existence, and comfort, and the nation can no more afford to consume the character of its young men to get revenue, than a man can afford to burn down his house to get warm.

The United States Government affords us a good illustration of wise conduct in its last contest with yellow fever in New Orleans. It not only buried the victims, and cared for the widows and orphans, but it quarantined the disease itself. The saloonkeepers and liquor dealers of this country will be very glad to have us devote all of our energies to the correction of crime and the alleviation of misery, so long as we leave their sources of crime and misery alone. But the source of crime and misery will never be transformed by expending money and energy to relieve against its evil results. We must quarantine the saloon itself, and thus dry up the source of the crime and misery.

LIQUOR TRAFFIC INDEFENSIBLE.

No state constitution contains any inhibition against the passage of laws for the promotion of the general welfare, but many laws passed for the supposed purpose of promoting the general welfare are set aside by the Courts because of the manner in which such laws are passed or because they come in conflict with some constitutional requirement as to form, though the substance of the act may be unobjectionable. It is sometimes found that such statutes do not have a uniform operation, or make an unreasonable classification, but no Court has ever set aside any statute for the reason that the statute was designed to promote the general welfare.

On the other hand the Courts have always carefully scrutinized police measures to see that they do not in any wise conflict with any of the real rights and liberties of the people.

In the matter of Jacobs, 98 N. Y. 98, the New York Court of Appeals says:

"Generally it is for the legislature to determine what laws and regulations are needed to protect the public health and secure the public comfort and safety, and while its measures are calculated, intended, convenient and appropriate to accomplish these ends, the exercise of its discretion is not subject to review by the Courts. But they must have some relation to these ends. Under the mere guise of police regulations, personal rights and private property cannot be arbitrarily invaded, and the determination of the legislature is not final and conclusive. If it passes an act ostensibly for the public health and thereby destroys or takes away the property of a citizen, or interferes with his personal liberty, then it is for the courts to scrutinize the act and see whether it really relates to and is convenient and appropriate to promote the public health. * * * * The courts must be able to see that it has at least in fact some relation to the public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end."

The same rule applies in Ohio. The Ohio Supreme Court in the case of *Palmer v. Tingle*, 55 O. S. 441, says: "The right and liberty of contract is one of the inalienable rights of man, fully secured and protected by our constitution, and it may be restrained only in so far as it is necessary for the common welfare, and the equal protection and benefit of the people. That such restraint of the right and liberty of contract is for the common public welfare, and equal protection and benefit of the people, must appear not only to the general assembly, by force of popular clamor, or the pressure of the lobby, but also to the courts, and it must be so clear that a court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common welfare, and equal protection and benefit of the people."

In *Ex parte Quarg*, 149 Cal. 79, 117 Am. St. Rep. 117, the Supreme Court of California said:

"The police power is broad in its scope, but it is subject to the just limitation that it extends only to such measures as are reasonable in their application and which tend in some appreciable degree to promote, protect, or preserve the public health, morals, or safety, or the general welfare. The prohibition of an act, which the court can clearly see has no tendency to affect, injure, or endanger the public in any of these particulars, and which is entirely innocent in character, is an act beyond the pale of this limitation and is therefore not a legitimate exercise of police power."

With the courts thus guarding with jealous eye every actual or

threatened encroachment upon the rights of liberty or property, it is a significant fact that all courts everywhere, without exception, have held that laws against the traffic in intoxicating liquors are proper exercises of the police power. The ablest saloon defender cannot point to a single court decision which says that the saloon is a good thing for society. No court has ever declared that the saloon added even an infinitesimal increment to the public health, the public morals or the public welfare. Not all courts have spoken with such emphasis as those quoted, but all have sustained anti-saloon laws as a proper exercise of the police powers of the state, and those that have made statements as to the character of the saloon and its influence, have always declared the saloon to be harmful, and not helpful. There is no other business claiming or pretending to be necessary or legitimate, which is so completely without a friend or advocate on the judicial tribunals of the land.

THE MAN WHO VOTES "WET."

If these arguments be sound, what is the real attitude toward the public welfare of the man who votes "wet?"

He says by his vote that he will not promote the general welfare by protecting public morals.

He says by his vote that he will not protect the intelligence of our citizenship against the acknowledged evils of the liquor traffic.

He says by his vote that he thinks it is a better thing to protect these sources of crime and misery than it is to protect the homes of our people.

He says by his vote that the crime and misery of the saloon are, in his opinion, beneficial to society, or else he does an act which he knows is injurious to the public welfare.

He says by his "wet" vote that these political clubs, which afford ready material for the worst sort of corruption, are worthy of the protection of a freeman's ballot.

If he is a legislator and votes against the enactment of wholesome laws, which fairly promise to promote the general welfare or votes to repeal such laws, he effectually denies to society the right of self defense and self protection. Not to help society fight her battles is bad enough, but to abandon society to the beast in politics and to deprive society of the means of self defense, is the basest of ingratitude and disloyalty.

Let us go back again to the words of Washington. He spoke of religion and morality as indispensable supports of political prosperity. He also said, "In vain would that man claim the

tribute of patriotism who should labor to subvert these great pillars of human happiness."

In these times of peace, there are no traitors armed with muskets and arrayed in line of battle against the flag of their country, but ignorance and immorality and the political power of these organized sources of crime and misery are as grave perils to the Republic in these times of peace as an army with banners in time of war. That citizen effectually betrays his country today, who purposely and with full knowledge, tries to place the government under the dominion of any source of crime and misery.

No citizen can rightfully claim the tribute of patriotism who labors to corrupt the morals of our people, or engages in a business which directly produces that result. And the citizen who wilfully votes to maintain an institution that corrupts public morals is no more loyal to his country than the corrupting institution which he knowingly supports.



Moral Law and Civil Law

Parts of the Same Thing

By

COL. ELI F. RITTER

of the Indianapolis Bar

Judge Noah Davis, of the New York Bar, says of this great book:

"I have preached and tried to practice for many years both on and off the bench the great truth so well expressed in your title, for nothing can be truer than that Moral Law and Civil Law are 'parts of the same thing.' Yet, I must say that in no book or paper, or published document or judicial opinion have I seen that simple axiom so well expressed, so clearly defined and so admirably proved as in your book. The strength of your argument lies in its clearness and simplicity, and no man can read it without being convinced of its truth and soundness. The strength of all human law lies in its morality, lacking that it has no just element of force and is therefore no law. Law commands what is right and forbids what is wrong, and when it undertakes to declare that what is wrong is right and lawful, the attempt fails and the right prevails."

PRICE POSTPAID

Paper, 50 Cents

Cloth, \$1.00

Published By

THE AMERICAN ISSUE PUBLISHING COMPANY

WESTERVILLE, OHIO.

UNIVERSITY OF CALIFORNIA LIBRARY,
BERKELEY

**THIS BOOK IS DUE ON THE LAST DATE
STAMPED BELOW**

Books not returned on time are subject to a fine of 50c per volume after the third day overdue, increasing to \$1.00 per volume after the sixth day. Books not in demand may be renewed if application is made before expiration of loan period.

MAR 16 1931

DEC 27 1943

75m-7,'30

YB 07522

HV 5076
. L48

27 2301

UNIVERSITY OF CALIFORNIA LIBRARY

